

These are the tentative rulings for civil law and motion matters set for Tuesday, October 28, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday October 27, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

---

**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

---

**1. M-CV-0058144 Hillcrest Properties, Inc. vs. Fass, Tonya, et al**

Appearance required on October 28, 2014 at 8:30 a.m. in Department 40.

Defendant's request to appear telephonically is granted. The court's telephonic appearance system is currently unavailable for this case. The court will contact counsel at the time of the hearing.

**2. M-CV-0060335 Citibank, N.A. vs. Deniro, Terry**

Appearance required. Plaintiff is advised that its notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Plaintiff's request for judicial notice is granted.

Plaintiff's Motion for Judgment on the Pleadings is granted.

The complaint states sufficient facts to constitute a cause of action against defendant, and defendant admits that all of the material allegations of the complaint are true. As the answer does not deny any of the material facts stated in the complaint, judgment on the pleadings is appropriate. Code Civ. Proc. § 438(c)(1)(A).

**3. M-CV-0061351 Clear V LLC vs. Amrit Darbar of USA Inc.**

Appearance required on October 28, 2014 at 8:30 a.m. in Department 40.

Plaintiff's Motion for Summary Judgment is denied.

A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. Code Civ. Proc. §1170.7. A party is entitled to a motion for summary judgment where there are no triable issues of fact. Code Civ. Proc. § 437c. The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. *Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468. Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. Code Civ. Proc. § 437c(p)(1).

Plaintiff's motion is supported only by the declaration of counsel. Counsel purports to attest to the terms of a verbal lease agreement between the parties, and to authenticate a unexecuted commercial lease agreement which purportedly reflected the terms of the verbal agreement. However, there is no indication in the declaration that counsel has the requisite personal knowledge to attest to such facts. Further, counsel's statement that defendant remains in possession lacks any foundation. Accordingly, plaintiff has failed to satisfy its burden of establishing every element necessary to sustain a judgment in its favor.

With respect to plaintiff's alternative request for summary adjudication, plaintiff establishes that summary adjudication is appropriate with respect to defendant's first affirmative defense for improper notice of termination of tenancy, and second affirmative defense for ripeness. Civil Code section 2924.8, cited by defendant, does not apply in this action, which alleges proper notice to vacate a commercial property based on a verbal lease agreement established after foreclosure of the property. Further, the filing of a separate civil action does not, in and of itself, create an issue of ripeness with respect to this unlawful detainer action. Defendant shall have the opportunity to present any evidence which may establish a triable issue of material fact at the time of the hearing. Cal. R. Ct., rule 3.1351(b).

Plaintiff's request for summary adjudication is denied as to defendant's third, fourth and fifth affirmative defenses. Plaintiff fails to negate an essential element of each defense, or establish that defendant does not possess and cannot reasonably obtain evidence needed to support each defense. Code Civ. Proc. § 437c(f)(1).

**4. M-CV-0061478 U.S. Bank Trust, N.A. vs. Bracken, Theresa A.**

Appearance required. Plaintiff is advised that its notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. Code Civ. Proc. §1170.7. A party is entitled to a motion for summary judgment where there are no triable issues of fact. Code Civ. Proc. § 437c. The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic*

*Richfield Co.* (2001) 25 Cal.4th 826, 850. The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. *Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468. Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. Code Civ. Proc. § 437c(p)(1).

To prevail in an action for unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property upon foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a three-day written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. Code Civ. Proc. § 1161a(b)(3).

Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Pltf. SSUMF 3, 4.) Plaintiff also shows that defendant was served with a notice to quit and vacate. (Pltf. SSUMF 5, 6.) Finally, Plaintiff submits evidence that defendant remains on the property after the expiration of the notice. (Pltf. SSUMF 7.) Accordingly, the burden shifts to defendant to establish a triable issue of material fact.

Defendant shall have the opportunity to present any evidence which may establish a triable issue of material fact at the time of the hearing. Cal. R. Ct., rule 3.1351(b).

**5. M-CV-0061535 Midland Funding LLC vs. Rose, Janet**

Appearance required. Plaintiff is advised that its notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Plaintiff's Motion for Judgment on the Pleadings is granted.

The complaint states sufficient facts to constitute a cause of action against defendant, and defendant admits that all of the material allegations of the complaint are true. As the answer does not deny any of the material facts stated in the complaint, judgment on the pleadings is appropriate. Code Civ. Proc. § 438(c)(1)(A).

**6. M-CV-0062065 Wells Fargo Bank, N.A. vs. Swendsen, Christopher Alan**

Appearance required. Defendant is advised that his notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Defendant's Demurrer to Plaintiff's Complaint is overruled.

A demurrer is used to test the legal sufficiency of the pleadings. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. A demurrer challenges defects that appear on the face of the pleading under attack, or from matters outside the pleading that are judicially noticeable. *Id.* No other extrinsic evidence is considered. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.

Defendant's demurrer does not challenge the legal sufficiency of plaintiff's complaint, and therefore it must be overruled. Further, the demurrer was served with insufficient notice time, as it was not served at least 16 court days (plus additional time for mailing) prior to the scheduled hearing date.

Defendant shall file and serve his answer to the complaint by no later than November 7, 2014.

**7. S-CV-0032381 Bowles, John vs. DFI Funding, Inc., et al**

Motion to Set Aside Default Against Plaintiff

Plaintiff's Motion to Set Aside Default is denied.

Plaintiff asserts that he was defaulted in this action when a motion for summary judgment was granted in defendant DFI Funding, Inc.'s favor. Thus plaintiff seeks mandatory relief based on Code of Civil Procedure section 473(b) based on his attorney's affidavit attesting to her mistake, inadvertence, surprise or neglect. The mandatory relief provision of section 473(b) applies to either (1) a clerk default; or (2) a "default judgment or dismissal". A summary judgment in favor of defendant is not a "dismissal". *English v. IKON Business Solutions, Inc.*(2001) 94 Cal.App.4th 130, 148. "[T]he mandatory provision of section 473(b) does not empower a court to set aside a summary judgment." *Prieto v. Loyola Marymount University* (2005) 132 Cal.App.4th 290, 295.

To the extent plaintiff seeks relief under the discretionary provisions of section 473(b) based on his attorney's mistake, inadvertence, surprise or excusable neglect, plaintiff fails to demonstrate that he is entitled to the relief requested. Plaintiff's counsel substituted into this action in February 2014. The motion for summary judgment was filed and served in April 2014, with the hearing scheduled for August 26, 2014. Plaintiff's counsel intentionally did not file an opposition to the motion. Nor did she request oral argument after the tentative ruling was published the day prior to the hearing, or appear at the hearing. She claims to have filed a motion for leave to amend, but the court has no record of counsel reserving a hearing date or filing any motion papers, and although she claims to have evidence of the filing, such evidence has not been presented to the court for purposes of this motion. In any event, plaintiff's counsel does not assert that she was somehow misled into believing that a continuance of the summary judgment motion had been granted. Nor did plaintiff seek a continuance under Code of Civil Procedure section 437c(h). *See Lewinter v. Genmar Industries, Inc.* (1994) 26 Cal.App.4th 1214, 1224. Finally, plaintiff does not purport to have any grounds to oppose summary judgment.

Based on the foregoing, plaintiff's Motion to Set Aside Default is denied.

Motion for Leave to File First Amended Complaint

In light of the ruling on plaintiff's Motion to Set Aside Default, plaintiff's Motion for Leave to File First Amended Complaint is denied. Plaintiff's proposed first amended complaint

seeks to allege causes of action against defendant DFI Funding Inc., which has been dismissed as a defendant following summary judgment.

Motion for Attorneys' Fees

Defendant DFI Funding, Inc.'s Motion for Attorneys' Fees is continued to December 2, 2014, at 8:30 a.m. in Department 40.

The starting point for a determination of hours reasonably spent is the attorney's time records. *Horsford v. Board of Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 395-397. Although defendant is not required to provide billing time sheets to support its award of attorneys' fees, defendant must provide sufficiently detailed information to permit the court to assess whether the number of hours worked on each task, as well as the billing rates of counsel, were reasonable. In this case, defendant has provided a chart of invoice dates and totals, which contains no details regarding the work actually performed, time spent on each task, billing rates of the attorneys who performed the work, etc. Neither plaintiff nor the court can fairly evaluate a request for nearly \$23,000 in attorneys' fees based on the information that has been provided.

Defendant shall file and serve a supplemental declaration in support of its motion, which either includes the subject billing statements (which may have any privileged information redacted), or a detailed summary of the number of hours expended by each attorney on each discrete task, by no later than November 14, 2014. Plaintiff may file and serve a supplemental reply by no later than November 21, 2014.

If oral argument is requested, defendant's request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

**8. S-CV-0032599 Chung, Arnold, et al vs. Leipsic, Reginald**

The Motion to Deem Request for Admissions Admitted and Motion to Compel Discovery Responses are continued to November 4, 2014 at 8:30 a.m. in Department 40.

**9. S-CV-0032661 Gromyko, Inc. vs. Didasko Agape, Inc.**

Plaintiff's Motion to Compel Answers and Production of Documents is granted in part.

The motion is granted with respect to the production of documents. Litigants who are precluded from seeking production of documents because of failure to move to compel additional disclosure within 45 days of response to initial request are nonetheless able to require that deponent bring documents to deposition. *Carter v. Superior Court* (1990) 218 Cal.App.3d 994. Defendant shall not be required to produce tax returns. However, in all other respects, compliance with the subject document requests is required.

The motion is denied with respect to deposition question Nos. 1-3. Plaintiff fails to draw any connection between the subject line of questioning and the issues relevant in this lawsuit. The motion is granted with respect to deposition question No. 4. To the extent the witness has

personal knowledge of information responsive to the question that goes beyond attorney-client communications, she may be compelled to respond.

The parties shall meet and confer regarding a mutually agreeable date and time for completion of the subject deposition.

**10. S-CV-0032973 Stover, Gregory vs. Sherrill, John, et al**

Plaintiff's objections to evidence are overruled.

Defendant Donna Sherrill's Motion for Summary Judgment is granted.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c). Defendants moving for summary judgment bear the burden of persuasion that one or more elements of the causes of action in question cannot be established, or that there is a complete defense thereto. Code Civ. Proc. § 437c(p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

The allegations against defendant Donna Sherrill ("Sherrill") arise out of an altercation on December 2, 2011, between plaintiff and Sherrill's husband. Angry words between the two eventually led to a physical altercation on or near plaintiff's property. After observing the altercation, Sherrill went back to her residence and asked her daughter's boyfriend, Ryan Colaw ("Colaw"), to go outside and try to separate the two. Sherrill was aware that Colaw had martial arts training, but did not direct him to use such training, or any weapons, to harm plaintiff. Colaw became involved in the physical altercation, and as a result, plaintiff's ankle was broken. Plaintiff has sued Sherrill, alleging causes of action for negligence and negligent infliction of emotional distress. Sherrill moves for summary judgment on the grounds that, as a matter of law, she did not owe a duty of care to plaintiff.

In determining the existence of a duty of care in a given case, a number of factors must be considered, including, "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. [Citations.]" *Rowland v. Christian* (1968) 69 Cal.2d 108, 113.

Plaintiff contends that it was foreseeable that plaintiff would be injured when Sherrill asked Colaw to go outside and try to separate the two men. A request that a third party separate two individuals is generally considered an attempt to prevent further harm. It is undisputed that Sherrill did not ask Colaw to cause injury to plaintiff, nor did she intend that Colaw cause injury to plaintiff. It is undisputed that Sherrill did not ask Colaw to obtain his martial arts sticks, did

not know that he had obtained them, and did not intend for Colaw to use them to provide the requested help. Based on the undisputed facts presented to the court, the harm suffered by plaintiff in this case was not foreseeable based on Sherrill's actions. Nor do the facts tend to favor a finding of moral blame as to Sherrill's conduct, or merit imposition of liability in circumstances such as these.

Viewing all facts presented to the court, including all reasonable inferences drawn therefrom, in the light most favorable to the opposing party, there is insufficient evidence to find that Sherrill breached a duty of care to plaintiff. Accordingly, Sherrill is entitled to judgment as a matter of law.

**11. S-CV-0034103 Rodemann, Paul A. vs. EMC Mortgage, Inc., et al**

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on October 28, 2014 at 8:30 a.m. in Department 32.

Defendants' request for judicial notice is granted.

Defendants' Demurrer to First Amended Complaint is sustained with leave to amend.

As a preliminary matter, defendant points out that plaintiff's first amended complaint ("FAC") references a loan, promissory note and deed of trust that no longer apply to the subject property, as plaintiff subsequently refinanced his loan, as reflected by a deed of trust recorded in August 2005. Plaintiff admits he has attached the wrong deed of trust and promissory note, and that he has referenced the incorrect loan in the FAC. This error constitutes a fundamental defect which renders the entire FAC ambiguous. The "Subject Loan" is alleged to be comprised of the promissory note and deed of trust attached to the FAC. The terms of the original loan are set forth in detail. (FAC, ¶ 16.) Plaintiff alleges that Encore Credit Corp. never held a beneficial interest in the deed of trust, while neglecting to mention that in or about July 2005, plaintiff executed a subsequent deed of trust securing a loan from Encore Credit Corp. for \$380,000 by the subject property. (RJN, Exh. B.) Plaintiff incorrectly alleges that Countrywide remained the lender as of December 9, 2009. (FAC, ¶ 37.) Plaintiff also alleges damages based on the assertion that his original principal loan balance of \$350,000 was increased to \$357,617.19 without explanation when his loan was modified in January 2013. (FAC, ¶ 55.) The FAC fails to acknowledge the deed of trust executed in July 2005, securing a loan for \$380,000. For this reason alone, the demurrer to the FAC should be sustained.

Plaintiff's first cause of action for fraud fails to state a valid claim. Plaintiff alleges no facts to support the assertion that defendants did not have authority from the true holder of the subject loan to discuss loan modification with plaintiff. To the extent plaintiff argues that an assignment of deed of trust is void as attempting to transfer property into a securitized trust after the closing date, this argument fails. A borrower lacks standing to challenge an assignment absent a showing of prejudice. *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 271. This claim is also not alleged with sufficient particularity, as plaintiff fails to allege facts showing when the purported representations were made by defendants.

Plaintiff's second cause of action for fraud fails to state a valid claim. Plaintiff alleges that he relied on promises of defendants that, due to his physical disability, his deadline would be extended to return documents. Plaintiff fails to allege any facts demonstrating the falsity of any such representations, and in fact alleges that defendants agreed to permanently modify plaintiff's loan.

Plaintiff's third cause of action for fraud fails to state a valid claim. With respect to plaintiff's third cause of action for fraud, plaintiff alleges that "defendants" strung plaintiff along, but never made good on its promise of a loan modification. This allegation is contradicted by plaintiff's admission that Chase agreed to permanently modify plaintiff's loan. This cause of action does not adequately allege wrongful conduct as to each individual defendant, instead lumping the various defendants together within the allegations. By this manner of pleading, the various defendants would not be able to discern what allegations relate to them specifically. This cause of action also fails to adequately allege the specific representations made by defendants. Plaintiff alleges no facts to support the conclusion that Chase "concealed the fact that [it] had no intention of giving Plaintiff a competitive modification, or that [it] did intend to string him along for as long as possible..." (FAC, ¶ 108.)

Plaintiff's fourth cause of action for fraud fails to state a valid cause of action. For the purpose of this cause of action, plaintiff again lumps together various defendants in alleging wrongful conduct, making it impossible for the individual defendants to determine what allegations apply to each of them specifically. Plaintiff also alleges no facts to support his assertion that MERS had no authority regarding the subject loan.

Plaintiff's fifth cause of action for negligent misrepresentation fails to state a valid cause of action. For purposes of this cause of action, plaintiff alleges that EMC Mortgage, Inc. ("EMC") acting as an agent of Chase, represented that it would honestly review plaintiff's loan modification application, and offer a loan modification if he was qualified. However, EMC ultimately denied plaintiff's modification application. EMC is alleged to be the loan servicer prior to Chase. Plaintiff alleges no facts to support the assertion that EMC was employed by, or an agent of Chase at the time the representations were made. Generic boilerplate agency allegations are insufficient to support agency liability. *Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 134, n.12.

Plaintiff's sixth cause of action for negligent misrepresentation fails to state a valid cause of action. As noted above, plaintiff's assertion that Chase was not authorized to service the subject loan is unsupported by factual allegations or legal authority.

Plaintiff's seventh cause of action for breach of contract fails to state a valid cause of action. Plaintiff fails to set out the terms of the written contract verbatim, or to attach a copy of the written instrument. *Otworth v. S. Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459. Plaintiff alleges an agreement between EMC and plaintiff whereby EMC agreed that if plaintiff made required Trial Period payments, EMC would evaluate plaintiff for a possible loan modification, and consider a modification of the loan terms. (FAC, ¶ 150.) Plaintiff alleges that EMC's obligations under the agreement were transferred to Chase when the loan servicing was transferred to Chase. (FAC, ¶ 153.) Plaintiff alleges no facts, and provides no law to support the

assertion that when Chase took over loan servicing duties relating to the subject loan, it automatically became a party to, and stood in breach of, a written agreement between plaintiff and EMC. Plaintiff alleges that EMC and Chase breached the agreement between EMC and plaintiff by failing to evaluate plaintiff for a loan modification under an objective standard. (FAC, ¶ 153.) However, this allegation contradicts the admission by plaintiff that Chase agreed to modify plaintiff's loan.

Plaintiff's eighth cause of action for breach of the covenant of good faith and fair dealing fails to state a valid claim. As admitted by plaintiff, this cause of action fails because the operative contracts are alleged to be the note and deed of trust which were rendered inoperative when plaintiff refinanced the subject loan. Further, plaintiff's allegations that Chase did not consider plaintiff for a HAMP modification contradict plaintiff's admission that Chase agreed to modify plaintiff's loan. Plaintiff offers no support for the assertion that Chase was required to offer a modification on different terms than what plaintiff accepted.

Plaintiff's ninth cause of action for promissory estoppel fails to state a valid claim. Plaintiff fails to allege a clear and unambiguous promise by defendants upon which plaintiff relied to his detriment.

Plaintiff's tenth cause of action for conversion fails to state a valid claim. Plaintiff alleges no facts to support the assertion that Chase was not in fact the servicer of the loan, or that other defendants were not in fact the beneficiaries, or had no legal right to collect on the debt.

Plaintiff's eleventh cause of action for wrongful foreclosure fails to state a valid claim. This cause of action is based on the assertion that the notice of default is void. However, this cause of action is rendered moot because the notice of default has already been rescinded. (RJN, Exh. J.)

Plaintiff's twelfth cause of action for declaratory relief fails to state a valid claim. This cause of action references the loan, promissory note and deed of trust that are no longer operative with respect to the subject property. As previously stated, there is no support for plaintiff's assertion that transfers to the trust after the closing date give rise to a cause of action by plaintiff.

Plaintiff's thirteenth cause of action for violation of Business and Professions Code §§ 17200, et seq. fails to state a valid claim. There is no factual or legal support for plaintiff's assertion that MERS' transfer of the subject loan to a securitized trust was unlawful, unfair, or fraudulent, or caused any harm to plaintiff. There is no factual or legal support for plaintiff's assertion that Chase had no legal authority to service the subject loan. Plaintiff offers no facts to support his assertion that Chase's offer to him of a permanent loan modification was fraudulent or unfair, and this contention is rendered ambiguous by the fact that the FAC refers to an inoperative loan, promissory note and deed of trust.

Plaintiff shall file and serve any amended complaint by no later than November 14, 2014.

If oral argument is requested, defendants' request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

**12. S-CV-0034359 Gray, Duane Bradley vs. Gray, Donly C., III, et al**

The Demurrer to Complaint and Motion to Strike are continued to November 4, 2014 at 8:30 a.m. in Department 40.

**13. S-CV-0034421 McGovern, Chris, et al vs. Sugar Bowl Corporation**

The Motion to Compel Discovery was dropped by the moving party.

**14. S-CV-0034441 Roberts, Kenneth, et al vs. JPMorgan Chase Bank, et al**

The Demurrer to First Amended Complaint was continued to November 18, 2014 at 8:30 a.m. in Department 40.

**15. S-CV-0034521 347 Group Inc. vs. Philip Hawkins Architect Inc.**

Plaintiff's request for judicial notice is granted.

Defendant's Demurrer to Plaintiff's Complaint is sustained with leave to amend with respect to plaintiff's second cause of action for breach of the implied covenant of good faith and fair dealing.

Plaintiff's second cause of action alleges that defendant breached the implied covenant of good faith and fair dealing by failing to remit payment for services rendered, as the contract required, while representing that payment would be made. Such allegations merely restate the first cause of action for breach of the subject contract. "If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated." *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.

Defendant's demurrer is overruled with respect to plaintiff's prayer for attorneys' fees. A demurrer challenges the sufficiency of the cause of action pleaded, and will be overruled if any valid cause of action is pleaded. A demand for improper relief does not vitiate an otherwise valid cause of action. *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1561-1562. A motion to strike, not a demurrer, is the procedure to challenge an improper prayer for damages.

Any amended complaint shall be filed and served by no later than November 14, 2014.

**16. S-CV-0034809 Dept. of Fair Employment/Housing vs. Awad, Majdi, et al**

The Demurrer to First Amended Complaint is dropped in light of the notice of bankruptcy stay filed with regard to defendant Majdi Awad.

**17. S-CV-0034833 Larios, Frank, et al vs. Bank of New York Mellon, et al**

The Demurrer to Complaint is continued to November 4, 2014 at 8:30 a.m. in Department 40.

**18. S-CV-0034881 Sanchez, Octavio vs. Awful Annie's Inc.**

Plaintiff's Demurrer to Answer is sustained in part with leave to amend, and overruled in part.

The demurrer is sustained with respect to defendant's 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th, 15th, 16th, 17th, 18th, 33rd, 46th (sic), and 37th affirmative defenses. These affirmative defenses aver insufficient factual allegations to apprise plaintiff of the basis for the defense. The demurrer is otherwise overruled.

Any amended answer shall be filed and served by no later than November 10, 2014.

**19. S-CV-0035037 McCray, Zakary, et al vs. Ford Motor Co., et al**

Defendant Les Schwab Tire Centers of Oregon, Inc.'s ("LSTCO's") Motion to Quash Service of Summons for Lack of Personal Jurisdiction is granted.

"[W]hen jurisdiction is challenged by a non-resident defendant, the burden of proof is upon the plaintiff to demonstrate that 'minimum contacts' exist between defendant and the forum state to justify imposition of personal jurisdiction." *Floveyor Int'l, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 793. Jurisdictional facts must be proved by competent evidence. *See Evangelize China Fellowship, Inc. v. Evangelize China Fellowship* (1983) 146 Cal.App.3d 440, 444.

Plaintiff contends that sufficient minimum contacts are established between LSTCO and California because of a warranty obtained following purchase of tires at a Les Schwab store in Oregon, which provided for free tire rotation for the life of the tires at any Les Schwab store in California, and because there is no distinction between the Oregon entity that sold the tires, and the California Les Schwab store that rotated the tires. Other than pointing out that the Oregon and California Secretary of State websites list LSTCO and co-defendant Les Schwab Tire Centers of California, Inc. as having the same address, plaintiff provides no foundation for the contention that there is "no distinction" between these entities.

Nor does the fact that a warranty obtained for tires purchased from an Oregon Les Schwab store provided that California Les Schwab centers would provide free tire rotations establish sufficient minimum contacts or purposeful availment to compel the exercise of personal jurisdiction. *See Worldwide Volkswagen v. Woodson* (1980) 444 U.S. 286, 298. Plaintiff does not demonstrate that LSTCO sells or services tires, advertises, maintains offices, employs personnel, or maintains bank accounts in California. Nor does plaintiff respond to LSTCO's contentions that it was not even in the business of selling or servicing tires, and did not operate the tire center where the tires were purchased.

Based on the foregoing, plaintiff has failed to demonstrate that minimum contacts exist between LSTCO and California such that personal jurisdiction may be imposed.

If oral argument is requested, defendant's request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

---

**These are the tentative rulings for civil law and motion matters set for Tuesday, October 28, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday October 27, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.**